



# County of Los Angeles CHIEF EXECUTIVE OFFICE

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April 8, 2011

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From: William T Fujioka  
Chief Executive Officer

## **SACRAMENTO UPDATE**

This memorandum contains a pursuit of County position on climate change legislation related to the Delta Reform Act; a status update on a County-advocacy bill related to solid waste and six County-interest climate change bills related to: 1) water quality control boards; 2) rainwater capture systems; 3) drinking water standards; 4) recycling; 5) California Environmental Quality Act (CEQA) exemption; and 6) solid waste.

### **Pursuit of County Position on Climate Change Legislation**

**SB 200 (Wolk)**, as amended on March 24, 2011, would require any State agency that is responsible for authorizing or implementing any action regarding implementation of the Bay Delta Conservation Plan (BDCP) to ensure that the conservation measure action is consistent with specified requirements in the bill.

SBx7 1 (Chapter 5 of 2009), also known as the Delta Reform Act of 2009, laid out a path for governance of the Delta, and established the two coequal goals of providing a more reliable water supply for California and protecting, restoring and enhancing the Delta ecosystem. It created a new governing Council for the Delta and established a detailed plan for water conservation and efficiency, securing water supplies from dislocations resulting from climate change, and provided for the highest level of environmental protection for threatened and endangered species in the Delta. The Act also requires the Delta Stewardship Council to consider the BDCP for inclusion in the Delta Plan, and authorizes the incorporation of the BDCP into the Delta Plan if the BDCP meets certain requirements.

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The Bay Delta Conservation Plan is one of the tools the State is pursuing to meet the co-equal goals and is a plan to provide 50-year permits compliant with the Natural Community Conservation Planning Act and the Federal Endangered Species Act of 1973 for the State Water Project, the Central Valley Water Project, and Mirant Energy Company. The BDCP is currently being prepared through a collaboration of State, Federal, and local water agencies, State and Federal fish agencies, environmental organizations, and other interested parties with the goal of protecting and restoring the ecological health of California's Sacramento-San Joaquin River Delta and providing a more reliable water supply.

Specifically, SB 200 would amend the Delta Reform Act to require every action to implement a conservation measure within the BDCP to meet all of the following goals: 1) the conservation measure action must not result in significant unmitigated negative impacts to another entity or region; 2) it must have a viable funding source; 3) funding for the conservation measure must be consistent with the "beneficiary pays principle;" and 4) it shall be consistent with maintaining public trust resources and maintaining flows in the Delta.

In addition, SB 200 would require every action to implement a conservation measure within the BDCP to meet all the following goals as well: 1) if additional flows are required to mitigate for the conservation measure action, beneficiaries of the BDCP are responsible for funding or providing those flows; 2) the conservation measure action shall be developed and implemented with the input of all affected local governments and the public; 3) it shall be implemented consistent with existing efforts to manage wildlife in the Bay-Delta estuary; and 4) it shall not violate any legal contract to maintain water quality within the Delta.

Furthermore, any action that results in reduced flow within the Delta or outflow from the Delta must be scientifically justified and consistent with maintaining the existing statewide water rights priority system, area of origin protections, and beneficial uses of water within the Delta. All actions taken must also be consistent with existing efforts to manage wildlife in the Delta, Suisun Marsh, and the San Francisco Bay, including adopted plans for management of the Yolo Wildlife Area, the Suisun Marsh Conservation District, the San Francisco Bay Plan, the Federal Migratory Bird Treaty Act, and applicable local natural community conservation plans.

The Department of Public Works (DPW) indicates that SB 200 includes intent language to avoid potential conflicts in achieving the co-equal goals of water supply reliability and Delta ecosystem stewardship, but does so by amending the Delta Reform Act of 2009 so that every action to implement a conservation measure within the BDCP must meet a long list of specified requirements that are likely unattainable. DPW believes this is unrealistic and would require every step in implementing a conservation measure within the BDCP to be re-approved on its own despite already being included as part of a

conservation measure that has met all legal requirements. According to DPW, many of the requirements in the bill have already been addressed in the existing Delta Reform Act.

In addition, DPW indicates that the bill includes unnecessary requirements that would promote gridlock during implementation of the BDCP which would hinder the ability of the BDCP to effectively meet its coequal goal of providing a more reliable water supply for the State while protecting, restoring and enhancing the Delta ecosystem. DPW states that SB 200 does not place California's water supply reliability and the Delta ecosystem on a sustainable path for the future and would negatively impact water supplies to County residents by making it virtually impossible to implement the BDCP, or other conservation measures, due to the numerous and likely unattainable requirements in the bill.

The Department of Public Works and this office oppose SB 200. The County has existing Board policy to support: 1) a reliable statewide stormwater capture, storage and conveyance system to deliver water supplies to Southern California; 2) the co-equal goals of a sustainable Delta ecosystem and reliable water supply; 3) legislation to improve the reliability of water imported into Los Angeles County; and 4) proposals which would improve the reliability, quality, quantity, and security of water supplies for Los Angeles County. Because SB 200 is contrary to these existing water policies, opposition to SB 200 is consistent with existing Board policy. Therefore, **the Sacramento advocates will oppose SB 200.**

Support for SB 200 is unknown. It is opposed by the Metropolitan Municipal Water District of Southern California. This measure is set for a hearing in the Senate Natural Resources Committee on April 12, 2011.

### **Status of County-Advocacy Climate Change Legislation**

**County-opposed AB 341 (Chesbro)**, which would: 1) increase the mandatory solid waste diversion rate from 50.0 percent to 75.0 percent; 2) require the owner or operator of a business that contracts for waste services and generates more than four cubic yards of total waste and recyclable materials per week, to arrange for recycling services; and 3) require enforcement agencies to inform solid waste facility operators that it is requiring a revision in the solid waste facility permit in conjunction with allowing changes in the design or operation of a facility, was amended on April 6, 2011.

The April 6, 2011 amendments clarify the definition of business, which is defined as a commercial or public entity or is a multifamily residential dwelling or five units or more. The key provisions of the bill remain unchanged. This measure is set for a hearing in the Assembly Natural Resources Committee on April 25, 2011.

### **Status of Climate Change Legislation of County-Interest**

**AB 246 (Wieckowski)**, as amended on March 29, 2011, would extend civil prosecution authority for violations of the Porter-Cologne Water Quality Control Act to district attorneys and the city attorney of a city with a population that exceeds 750,000. The bill would authorize a district attorney or a city attorney to pursue judicial enforcement only after approval by the State Attorney General (AG) of an application for judicial enforcement.

Existing law requires regional water quality boards to request enforcement action and that a civil action can be brought only by the AG. Persons who might be sued by the AG for significant penalties currently have the opportunity to appear before the regional water quality board and oppose the referral to the AG.

The Los Angeles County Municipal Stormwater National Pollutant Discharge Elimination System (NPDES) permit contains a requirement for permittees to develop and implement programs for stormwater management within the County. Local agencies are responsible for compliance with Total Maximum Daily Loads (TMDLs), and could face fines up to \$10,000 per violation.

AB 246 would delegate authority to the executive officer of the regional board to request an enforcement action and would allow district attorneys, upon the request of the regional or State water quality board, to bring civil enforcement actions upon approval by the AG. The bill also deletes the existing hearing requirement by authorizing the executive officer to make the referral to local prosecutors without prior notice or allowing individuals the opportunity to present additional facts to dispute the referral for enforcement.

The Department of Public Works reviewed AB 246 and indicates that the County District Attorney (DA) currently brings criminal matters while the city attorney brings misdemeanors and civil matters. DPW indicates that County Counsel's opinion is that the DA should not be added as a referral for judicial enforcement since the statutes that would be enacted by the DA in AB 246 all provide for civil enforcement only. DPW believes that authorizing the city attorney to enforce NPDES and regional board permits on private parties would help the County achieve improved water quality without increasing the financial burden on the County.

AB 246 is supported by the California District Attorneys' Association and the California Coastkeeper Alliance. It is opposed by: American Council of Engineering Companies, CA; Association of California Water Agencies; California Association of Sanitation Agencies; Cal Chamber; California Farm Bureau Federation; and California Manufacturers and Technology Association. This measure is set for a hearing in the Assembly Environmental Safety and Toxic Materials Committee on April 26, 2011.

**AB 275 (Solario)**, as amended on March 25, 2011, would enact the Rainwater Capture Act of 2011 which would authorize licensed landscape contractors to construct a rainwater capture system and allow a residential, commercial, or governmental landowner to install, maintain and operate the following: 1) a rain barrel system for outdoor non-potable water use; 2) a rainwater capture system for outdoor non-potable water use or infiltration into groundwater; and 3) a rainwater capture system for indoor non-potable water use if specified conditions are met. Landowners with a rainwater capture system would have to comply with all local rainwater or stormwater capture programs.

AB 275 is supported by a number of agencies, including: California Building Industry Association; California Coastkeeper Alliance; California Landscape Contractors Association; City of Santa Monica; Natural Resources Defense Council; and Planning and Conservation League. It is opposed by American Society of Civil Engineers. This measure is set for a hearing in the Assembly Water, Parks and Wildlife Committee on April 26, 2011.

**AB 403 (Campos)**, as introduced on February 14, 2011, would require the California Department of Public Health (CDPH) to establish a State drinking water standard for chromium 6 by January 1, 2013. If CDPH fails to establish a standard by the deadline, AB 403 would require the public health goal set by the Office of Environmental Health Hazard Assessment as of January 1, 2011 to be the applicable standard.

The Departments of Public Health and Public Works are currently reviewing AB 403 for County impact. Support and opposition to AB 403 is unknown. This measure is set for a hearing in the Assembly Environmental Safety and Toxics Material Committee on April 26, 2011.

**AB 818 (Blumenfield)**, as introduced on February 17, 2011, would require an owner of a multifamily dwelling with five or more living units to arrange for recycling services that are appropriate and available for the multifamily dwelling. AB 818 is supported by the California State Association of Counties. Opposition is unknown. This measure is set for a hearing in the Assembly Natural Resources Committee on April 11, 2011.

**AB 931 (Dickinson)**, as introduced on February 18, 2011, would amend the California Environmental Quality Act (CEQA) criteria in order to qualify affordable infill housing development projects for the existing CEQA exemption allowed for other infill projects.

California Environmental Quality Act exempts infill housing projects meeting certain specified criteria, including among other things, a community-level environmental review that was adopted or certified within five years of the date that the application for the project is deemed complete and that the project promotes higher density infill housing. CEQA presumes that a project with a density of at least 20 units per acre promotes

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higher density infill housing. AB 931 would extend the community-level environmental review certification period from 5 to 20 years, and lower the density threshold from 20 units to 15 units per acre to be considered to promote higher density housing.

AB 931 is sponsored by the California State Association of Counties. Opposition is unknown. This measure is currently in the Assembly Natural Resources Committee pending a hearing.

**AB 1178 (Ma)**, as amended on April 4, 2011, would: 1) prohibit a city, county, or local agency from restricting or limiting in any way the importation of solid waste into that city or county based on the place of origin; 2) prohibit a local agency from exporting solid waste to any other jurisdiction unless the exporting city or county has implemented an approved city or county household hazardous waste element and a source reduction and recycling element, or has submitted a countywide integrated waste management plan, with which it is in compliance; and 3) authorize a local agency, in addition to a city or county, to assess special fees of a reasonable amount on the importation of waste from outside of the county.

AB 1178 includes intent language that indicates restrictions or limits on the importation of solid waste based on the place of origin are not aspects of solid waste handling subject to local government determination because they unreasonably limit the disposal of solid waste. The Departments of Public Works and Regional Planning are currently reviewing AB 1178 for County impact. Support and opposition to AB 1178 is unknown. This measure is set for hearing in the Assembly Natural Resources Committee on April 25, 2011.

We will continue to keep you advised.

WTF:RA  
MR:EW:sb

c: All Department Heads  
Legislative Strategist  
Local 721  
Coalition of County Unions  
California Contract Cities Association  
Independent Cities Association  
League of California Cities  
City Managers Associations  
Buddy Program Participants